

Newton, Mimi

From: Newton, Mimi
Sent: Tuesday, December 17, 2013 2:26 PM
To: Stephen M. Richmond
Cc: Zabaneh, Mahfouz
Subject: Permit Applicant, certification, etc.

Thanks for the message Steve.

I have a couple of thoughts in response, but I think we are in agreement as to the effect of your analysis.

We had previously agreed that the "*entirely internal*" creation of the subsidiary entity Siemens Water Technologies, LLC by the parent, Siemens Industry, Inc. would not constitute a change in operational control of the Parker, AZ Facility, because the same people who were responsible for the day to day operations of the Facility prior to the creation of the subsidiary would not change once the subsidiary was created. However, I noted in our email exchange from February 2013 that "Information regarding any modifications to either the Part A or the Part B Permit Applications made necessary by the establishment of the new entity in Step 1 . . . (e.g., a name change, significant personnel changes etc.) should be transmitted to EPA prior to or at the time of that transaction to ensure that the pending applications, contact information and EPA's understanding about the identity of the entity actually operating the facility are up to date. In addition, if changes to financial assurance mechanisms are necessary as a result of the transaction described in Step 1, revised insurance policies or other documentation reflecting those changes should also be provided to EPA as soon as they are available." And, you sent me an email message on November 22, 2013 with the updated financial assurance information.

Since the time that the Part B Permit Application was certified by Siemens Industry, Inc. in December of 2009, information has been requested by EPA and submitted to EPA by the Facility operator to supplement the Part B Permit Application and Mike and I anticipate that additional requests and supplementation will occur over the next few months as EPA gets closer to making a proposed permit decision. For that reason, there will be a need for an updated permit application certification once the supplementation of the Application is complete. This would involve the appropriate SWT corporate official's certification of the information submitted to supplement the Part B Permit Application.

However, I am not opining on your analysis of the *Best Foods* decision or taking any position on the possible implications of that decision on the facts at issue with respect to this Facility's permit application. Nor do I agree with your characterization of SWT as the Facility "owner," which is actually the Colorado River Indian Tribes. But, other than that, I think we are on the same page.

Mimi Newton
Assistant Regional Counsel
US Environmental Protection Agency
Region 9 (ORC-3)
75 Hawthorne St.
San Francisco, CA 94105
(415) 972-3941
newton.mimi@epa.gov

From: Stephen M. Richmond [<mailto:SRichmond@bdlaw.com>]
Sent: Friday, December 13, 2013 12:39 PM
To: Newton, Mimi
Subject: Siemens Water Facility in Parker, Arizona

Mimi – I am writing to confirm my understanding of our discussions relating to the pending sale of the Siemens Water business to a third party and the impact on interim status at the Siemens facility in Parker, Arizona.

As we discussed earlier in the year, Siemens Industry, Inc. placed its Parker facility into a wholly owned subsidiary, Siemens Water Technologies LLC (SWT), effective July 1, 2013. We had reached agreement prior to that change that this event would not constitute a change in ownership or control under 40 CFR 270.72(a)(4), understanding that this was part of a two-step transaction.

As a planned second step, Siemens Industry, Inc. has now announced an intended sale of the LLC membership interest in SWT to a subsidiary of a third party private equity company, AEA. We had previously discussed that the sale of SWT to a third party might constitute a change in ownership or control. However, at that time, we did not contemplate that the purchaser would be a private equity company which would buy only the membership interest in the company and would plan to have the company continue to function in its current form. As we have discussed, AEA plans on buying the membership interest of SWT, so that SWT will continue to be the owner of the facility, and announcements to date indicate that the leadership team of SWT will generally be kept in place to run the company. As AEA's web site indicates, it views its holdings as investments, and they generally maintain an independent existence to their customers and the public. While the SWT name will likely change, the entity will continue to exist, those running the company will in large part stay in place, and the company will continue to own and operate the Parker facility and make the management decisions that are customarily made by owners and operators.

As we have discussed recently, our view is that under the Supreme Court's decision in *US v. Bestfoods*, entities such as SWT maintain a distinct existence separate from their parent companies for purposes of establishing who is an owner or operator under environmental laws, and under these facts it would appear that there is no change in ownership or operational control as contemplated by 40 CFR 270.72(a)(4).

I understand from our discussions that EPA agrees that the specific facts of this sale will not constitute a change in ownership or operational control of the Parker facility under 40 CFR 270.72(A)(4), provided that as EPA moves to finalize the pending RCRA permit for the Parker facility, EPA may wish to have a current official of SWT submit a certification to the truth and accuracy of the completed permit application in order to ensure that all updates to the application, including updates that have recently been provided and will likely be provided in the immediate future in response to specific questions from EPA, have been certified by a current official of the company.

Please let me know if I have accurately summarized our discussion. Thank you again for your assistance in this matter.

Stephen M. Richmond

Principal
Beveridge & Diamond, P.C.
15 Walnut Street Suite 400
Wellesley, MA 02481
T (781) 416-5710 ~ F (781) 416-5799
SRichmond@bdlaw.com
www.bdlaw.com



CONFIDENTIALITY STATEMENT: This electronic message contains information from the law firm of Beveridge & Diamond, P.C. and may be confidential or privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (202) 789-6000 or by e-mail reply and delete this message. Thank you.

Please consider the environment before printing this e-mail.